

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF NOGALES

THIS AGREEMENT is entered into 16 August, 2002, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-964, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF NOGALES acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City

3. Such project within the boundary of the City has been selected by the City; and the plans, estimates and specifications will be prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

4. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

NO. 25431
Filed with the Secretary of State
Date Filed: 08/16/02
Petrey Bayless
Secretary of State
By: Dwight V. Graenewald

5. The City, in order to obtain federal funds for the construction of the project, is willing to provide City funds to match federal funds in the ratio required or as determined by the City and FHWA, including actual construction engineering and administration costs (CE)

6. The work embraced in this agreement is the Design and Construction of Morley Avenue Enhancements, and the estimated costs are as follows:

Estimated Project Cost (Design & Construction) \$282,622 00 (Does not include survey & historical assessment @ \$12,256)

Total Design Cost:	\$31,200	
Federal Aid Share:	\$29,422	Percentage: 94.3%
Local Match:	\$ 1,778	Percentage: 5.7%

Total Construction Cost:*	\$251,422	
Federal Aid Share:	\$206,328	Percentage: 94.3%
Local Match:	\$ 14,331	Percentage: 5.7%
Local Match:	\$ 30,763	Percentage: 100.0%

*includes Construction Engineering at 15% and Change Orders at 5%

Grand Total Costs:	
Federal Aid Share:	\$235,750
Local Match:	\$ 46,872

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction, the City will and does hereby designate the State as authorized agent for the City. The State hereby agrees to be authorized agent for the City, and with the aid and consent of the City and the FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of the City and the FHWA, enter into a contract with a firm on behalf of the City to whom the award is made for the construction of the project; such project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the City and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation. The State will enter into a Project Agreement with FHWA on behalf of the City covering the work embraced in said construction contract and will request the maximum federal funds available, including construction engineering and administration costs.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the City shall be obligated to incur and will pay for said increased costs.

2. Prior to the solicitation of bids, the City shall deposit funds with the State in the amount determined to be necessary to match federal funds in the ratio required.

3. The City shall acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

4. The City shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the project area, and hereby certifies that all obstructions and encroachments have been or will be removed there from, prior to the start of construction.

5. The City shall arrange to have furnished and installed in its name necessary water services from water mains to the designated locations within the project area at City expense.

6. The City shall furnish all water for landscape installation during the construction phase, and all water thereafter necessary to properly maintain the landscape, all at City expense.

7. After satisfactory completion of construction including the landscaping establishment phase, the City shall maintain improvements, landscaping, the irrigation system, pay for irrigation system electric, including all testing, adjusting, repairing and operation of the irrigation system, and shall furnish all electrical power necessary to operate the irrigation system.

8. The City hereby agrees to maintain the landscaping. Maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed, and established at the completion of the Project.

9. The City will waive the requirements of Arizona Revised Statutes Section 28-7209.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another entity.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

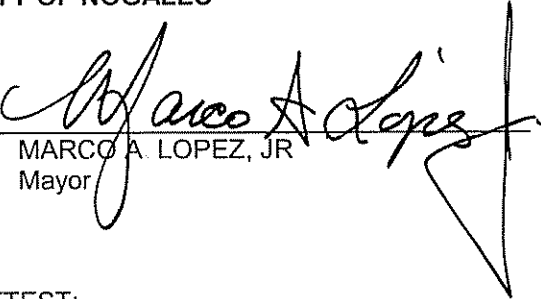
Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
FAX (602-712-7424
lgrandy@dot.state.az.us

City of Nogales
City Manager
777 North Grand Avenue
Nogales, AZ 85621

7. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

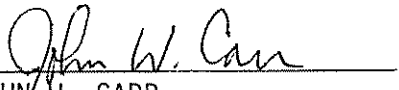
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF NOGALES

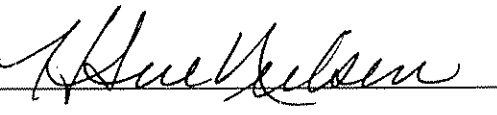
By 
MARCO A. LOPEZ, JR
Mayor

STATE OF ARIZONA

Department of Transportation

By 
JOHN W. CARR
Acting Contract Administrator

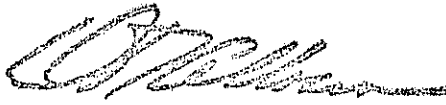
ATTEST:

By 
City Clerk

RESOLUTION

BE IT RESOLVED on this 05 day of December, 2001, that I, the undersigned VICTOR M. MENDEZ, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the INTERMODAL TRANSPORTATION DIVISION, to enter into an intergovernmental agreement with CITY OF NOGALES, for the purpose of defining responsibilities is the design and construction of Morley Avenue Enhancements.

Therefore, authorization is hereby granted to draft said agreement, which upon completion, shall be submitted to the Contract Administrator for approval and execution.

A handwritten signature in black ink, appearing to read 'D. Allocco', is positioned above a horizontal line.

DAVID R. ALLOCCO, P.E. Assistant State Engineer
Engineering Technical Group
for VICTOR M. MENDEZ, Director

ORDER NO. 2002-07-059

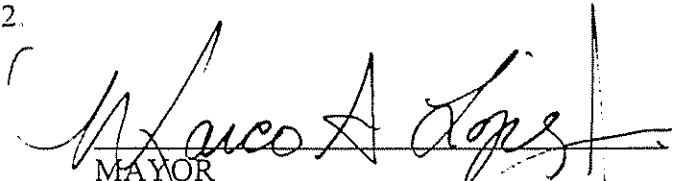
**A ORDER OF THE MAYOR AND COUNCIL OF THE CITY
OF NOGALES, ARIZONA AUTHORIZING THE CITY OF
NOGALES TO ENTER INTO AN INTERGOVERNMENTAL
AGREEMENT WITH ARIZONA DEPARTMENT OF
TRANSPORTATION.**

WHEREAS, the agreement with Arizona Department of Transportation is in the best interest and welfare of the City of Nogales

NOW, THEREFORE, BE IT ORDERED, by the Mayor and Council of the City of Nogales that :

1. That the intergovernmental agreement with Arizona Department of Transportation, attached hereto and made a part hereof as Exhibit "A" is hereby ratified and approved.
2. That the Mayor is hereby authorized to execute the agreement on behalf of the City, and City Staff are directed to take all necessary and reasonable actions to implement the agreement.


PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Nogales, Arizona this 10 day of July, 2002.


MAYOR

ATTEST:


CITY CLERK/MANAGER

APPROVED AS TO FORM:


CITY ATTORNEY



JANET NAPOLITANO
ATTORNEY GENERAL

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
TRANSPORTATION SECTION
1275 WEST WASHINGTON STREET, PHOENIX, AZ. 85007-2926

TRN Main: (602) 542-1680
Direct: (602) 542-8855
Fax: (602) 542-3646
MAIN PHONE: (602) 542-1680
FACSIMILE: (602) 542-3646

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR02-0673-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED August 13, 2002.

Janet Napolitano
Attorney General

Susan E. Davis
Assistant Attorney General
Transportation Section

SED:djd

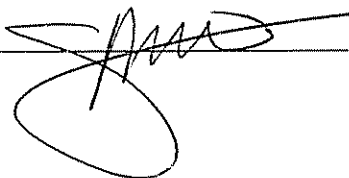
Enc.

APPROVAL OF THE NOGALES CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the STATE OF ARIZONA, Department Of Transportation and the CITY OF NOGALES, and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 24 day of July, 2002.

Attorney

A handwritten signature in black ink, appearing to be "J. M. ...", is written over a horizontal line. Below the line, there is a large, loopy circular flourish.